

make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. However, 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584 provide authority to waive, under certain conditions debts individuals owe the Government that are the result of erroneous payments of pay and allowances (including travel and transportation allowances). A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant.

2. Debts may be waived only when collection would be against equity and good conscience and would not be in the best interests of the United States. There must be no indication the erroneous payment was solely or partially the result of the fraud, misrepresentation, fault, or lack of good faith of the applicant.

3. The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not sufficient basis in and of itself for granting a waiver.

4. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification.

5. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary.

6. A waiver may be inappropriate in cases where a recipient questions a payment (which ultimately is determined to be erroneous) and is mistakenly advised by an appropriate official that the payment is proper, if under the circumstances the recipient knew or reasonably should have known that the advice was erroneous.

7. Financial hardship is not a factor for consideration in determining whether a waiver is appropriate.

8. Waiver determinations under these standards depend on the facts in each case.

APPENDIX C TO PART 284—SUBMITTING A WAIVER APPLICATION

A. WHO MAY APPLY FOR WAIVER

Any person ("applicant") from whom collection is sought for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) may submit a waiver application

under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584. Additionally, an authorized official of the Component concerned, or the Director, DOHA or designee may initiate a waiver application during the processing of a claim under 32 CFR part 281.

B. WHERE TO SUBMIT A WAIVER APPLICATION

An applicant must submit a waiver application to the Component concerned according to the guidance provided by that Component. A waiver application submitted somewhere other than to the Component concerned does not stop the calculation of the time limit as discussed in paragraph F to this Appendix. It is the applicant's responsibility to submit the waiver application properly.

C. FORMAT OF A WAIVER APPLICATION

An applicant must submit a waiver application in the format prescribed by the Component concerned. It must be written and signed by the applicant (in the case of an application on behalf of a minor or incompetent person, there are additional requirements explained at paragraph E to this Appendix) or by the applicant's authorized agent or attorney (there are additional requirements explained at paragraph D to this Appendix). In addition, the waiver application should include:

1. The applicant's mailing address.
2. The applicant's telephone number.
3. The applicant's social security number when required by the Component concerned.
4. The amount for which waiver is requested.
5. An explanation why a waiver should be granted under the standards explained at Appendix B to this part.
6. Copies of documents referred to in the application.
7. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

D. WAIVER APPLICATION SUBMITTED BY AGENT OR ATTORNEY

In addition to the requirements in paragraph C to this Appendix, a waiver application submitted by the applicant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the applicant.

E. WAIVER APPLICATION SUBMITTED ON BEHALF OF A MINOR OR INCOMPETENT PERSON

In addition to the requirements in paragraph C to this Appendix:

1. If a guardian or committee has not been appointed, a waiver application submitted on behalf of a minor or incompetent person must:

- i. State the applicant's relationship to the minor or incompetent person.
- ii. Provide the name and address of the person having care and custody of the minor or incompetent person.
- iii. Include an affirmation that any moneys received shall be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

2. If a guardian or committee has been appointed, a waiver application on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the appointment and qualification of the guardian or committee.

F. WHEN TO SUBMIT A WAIVER APPLICATION

An applicant must submit a waiver application so that it is received by the Component concerned within three years after the erroneous payment is discovered. The date of discovery is the date it is definitely determined by an appropriate official that an erroneous payment has been made. The time limit is set by 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584, whichever applies. It may not be extended or waived. Although the issue of timeliness is usually raised on initial submission (as explained in paragraph B to Appendix D in this part), the issue may be raised at any point during the waiver application consideration process.

APPENDIX D TO PART 284—PROCESSING A WAIVER APPLICATION WHEN THE DEBT IS \$1,500 OR LESS

A. INITIAL COMPONENT PROCESSING

Upon receipt of a waiver application, the Component concerned must:

- 1. Date stamp the application on the date received.
- 2. Determine whether the application was received within three years after the discovery of the erroneous payment. If the application was not timely, follow the procedures in paragraph B to this Appendix.
- 3. Investigate the circumstances relating to the erroneous payment.
- 4. Refer the application to the appropriate determining official (see paragraph C to this Appendix) for consideration and an initial determination.

B. UNTIMELY WAIVER APPLICATIONS

When the Component concerned determines that a waiver application was not received within three years after the erroneous payment was discovered, the Component must send the applicant a notice of untimely receipt.

- 1. The notice must:
 - i. Cite the applicable statute and explain the reasons for the finding of untimely receipt.

- ii. State that the application was not received within the statutory time limit and may not be considered unless that finding is reversed on appeal.

iii. Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph B.2.).

- iv. State that the statutory time limit may not be extended or waived.

2. An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice and may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

- i. Explain the points of, and reasons for, disagreement with the notice.

ii. Have any documents referred to in the rebuttal attached.

iii. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

3. If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the Component must return the application to the applicant with a notice that the finding is final and the application may not be considered.

4. If the applicant submits a timely rebuttal, the Component must consider the rebuttal.

i. If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on its merits.

ii. If the Component does not reverse the finding of untimely receipt, the Component must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate determining official (see paragraph C.1. to this Appendix) for an initial determination on the issue of untimely receipt. The Component does not need to investigate the merits of the application before forwarding the record.

5. After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in paragraph D to this Appendix. In addition, if the determining official finds that the application was timely, the official may:

- i. Return the application to the Component concerned for processing on its merits according to this part, or
- ii. Consider the application and make an initial determination on its merits according to paragraph C.2. to this Appendix.